IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 32727 of 2007(U)

PETITIONER:

V.J.TECH SOLUTIONS, 49/1968-C
KADAMPOLIL BUILDING, BTS ROAD, EDAPPALLY,
KOCHI-24 REPRESENTED BY PARTNER E.VENUGOPAL.

BY ADV. SRI.K.U. VIJAYAN
SRI.K.N.SREEKUMARAN

RESPONDENTS:
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1. **INTELLIGENCE INSPECTOR, SQUAD NO.IV,**
   COMMERCIAL TAXES,
   THIRUVANANTHAPURAM - 695 033.

2. **STATE OF KERALA REPRESENTED BY**
   SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM - 695001.

BY GOVT. PLEADER, SRI.K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON 14/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 32727 OF 2007 U
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Dated this the 14th November, 2007

J U D G M E N T

Goods consigned to the petitioner at Cochin while on transport to Trivandrum were detained by Ext. P4. It is stated in Ext.P4 that on verification of the documents it is seen that the invoice was raised to the petitioner, the goods were under transport to a party in Trivandrum by a delivery chalan only. As no invoice has been raised, attempt to evade tax was suspected and on that basis goods were detained and security was demanded. It is challenging Ext. P4, this writ petition has been filed.

2. Petitioner submits that he is a registered dealer and that based on Ext. P2 for the supply of cleaning equipments and its accessories, petitioner placed Ext.P3 order with a manufacturer for supply of the articles. Accordingly, the goods were imported through Walayar Check Post and to avoid transshipment at Cochin, the articles were directly consigned to the

customer in Trivandrum. It is alleged that at Trivandrum on inspection of the godown of the common carrier, they were detained as per Ext. P4.

3. Petitioner would attempt to justify the transport on the basis that according to the prevailing practice, the terms of payment was cash on delivery and that the goods were to be retained by the transporter till the receipt of D.D. and on intimation thereof, the original copy of the L.R. will be sent along with the representative of the petitioner's firm. The other plea raised is that on the strength of the very same documents that were available with the transporter, the officials of the department had cleared the goods at the Walayar Check Post and therefore there was nothing to doubt the genuineness of the documents or suspect attempt to evade tax.

4. In my view, respondents are justified in demanding security deposit. Even according to the petitioner , invoice was not raised in the name of the consignee at Trivandrum. This is attempted to be justified relying on the alleged prevailing practice of sending the original copy of L.R. along with the

petitioner's representative on receipt of value. The correctness or otherwise of this is a matter to be established. Further even if it is true that on the very same set of documents, the goods were allowed to be cleared at the check post there is nothing irregular in the officials of the department suspecting an attempt to evade tax, at a later point of time. Therefore, prima facie, pending enquiry into the matter the department was well justified in asking for security for the release of the goods.

5. In view of the above, I direct that the goods will be released to the petitioner on its furnishing bank guarantee for the amount mentioned in Ext.P4. Thereafter, adjudication will follow and the parties will be governed by the order to be passed.

ANTONY DOMINIC
JUDGE

jan/-